

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANNA MENDOZA, individually and	)	
on behalf of J.G. a minor, et	)	NO. CV-05-327-RHW
al.,	)	
	)	REPORT AND RECOMMENDATION TO
Plaintiffs,	)	ADOPT THE PARTIES' AGREED
	)	PROPOSAL FOR MONITORING THE
v.	)	CONSENT ORDER
	)	
BREWSTER SCHOOL DISTRICT NO.	)	
111, et al.,	)	
	)	
Defendants.	)	

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BEFORE THE COURT on Report and Recommendation is the parties' Proposal for Monitoring of Consent Order (Ct. Rec. 91) in the captioned matter. Attorneys Darrell Lee Cochran and Lorena Gonzalez, of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP, represent the Plaintiffs; attorneys Jerry Moberg, Michael E. McFarland and James Baker represent Defendants. Attorney Timothy Fennessy served as Guardian ad Litem (GAL).

The parties agree that the Proposal, filed by Defendants, is appropriate for a form of the order as to monitoring the Consent Order (Ct. Rec. 120). In addition, the parties agree that Ruben Carrera should serve as the monitor who will report to the court, counsel for Plaintiffs and counsel for Defendant School District on

1 the compliance of Defendant Brewster School District No. 111 with  
2 the provisions of the Consent Order. The Defendant School District  
3 will enter into a memorandum of agreement (MOA) with the monitor for  
4 a two-year term, to begin within a reasonable time of the date the  
5 court appoints the monitor. It is anticipated the monitor's duties  
6 will be completed within two years. The only question is whether  
7 the MOA should have an amount certain as an annual ceiling of fees  
8 to be paid to the monitor. The proposal, language of which is  
9 intended as agreed and to be converted into a form of order, at p.  
10 4, line 9, contains a blank for an amount for annual ceiling on  
11 fees. However, the parties have not addressed this issue with the  
12 court. Accordingly, it is recommended that sentence, beginning at  
13 line 7, and ending at line 9, either be deleted, or that the parties  
14 timely submit their proposals for a ceiling on fees.

15 **IT IS RECOMMENDED** that an order captioned "Order For Monitoring  
16 of Consent Order and Appointing as Monitor Ruben Carrera" be entered  
17 in the form of the language contained in the Proposal (Ct. Rec. 91),  
18 commencing at paragraph 1, page 1, and ending with the language of  
19 paragraph 12, page 5, except and unless the earlier described  
20 sentence at page 4 is omitted.

#### 21 **OBJECTIONS**

22 Any party may object to a magistrate judge's proposed findings,  
23 recommendations or report within ten (10) days following service  
24 with a copy thereof. Such party shall file written objections with  
25 the Clerk of the Court and serve objections on all parties,  
26 specifically identifying any the portions to which objection is  
27 being made, and the basis therefor. Any response to the objection  
28 shall be filed within ten (10) days after receipt of the objection.

1 Attention is directed to FED. R. CIV. P. 6(e), which adds another  
2 three (3) days from the date of mailing if service is by mail.

3 A district judge will make a de novo determination of those  
4 portions to which objection is made and may accept, reject, or  
5 modify the magistrate judge's determination. The judge need not  
6 conduct a new hearing or hear arguments and may consider the  
7 magistrate judge's record and make an independent determination  
8 thereon. The judge may, but is not required to, accept or consider  
9 additional evidence, or may recommit the matter to the magistrate  
10 judge with instructions. *United States v. Howell*, 231 F.3d 615, 621  
11 (9<sup>th</sup> Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C); FED. R. CIV. P. 73;  
12 LMR 4, Local Rules for the Eastern District of Washington.

13 A magistrate judge's recommendation cannot be appealed to a  
14 court of appeals; only the district judge's order or judgment can be  
15 appealed.

16 The District Court Executive is directed to file this Report  
17 and Recommendation and provide copies to counsel for the parties and  
18 to Chief Judge Whaley.

19 DATED November 27, 2006.

20  
21 S/ CYNTHIA IMBROGNO  
22 UNITED STATES MAGISTRATE JUDGE  
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